
(1984) 05 GAU CK 0006
In the Gauhati High Court
Case No : Civil Revision No. 68/83

Shri Nagendra Nath Das

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-05-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 30(1), 80, 80(1), 80(2)

Citation : (1984) 2 GLR 359

Hon'ble Judges : T.S. Misra, C.J

Bench : Single Bench

Advocate : T.C. Khatri, for the Appellant; S. Ali, Sr. Central Govt. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

T.S. Misra, C.J.—This provision is directed against the order passed by the learned Sadar Munsiff, Tezpur, returning the part for presentation after complying with the requirement of Section 30 Sub-section (1) of the Code of Civil Procedure.

2. The Plaintiff is an employee of the Union of India. Initially he was appointed as Driver Engine Static in General Reserve Engineer Force since 25th January, 1961 under the Border Roads Organisation of the Government of India. Firstly he was absorbed in 668 Construction Company. The Company moved from Allahabad to Dibrugarh in 7th Teat under the Chief Engineer, headquarters Project Vertak 99 A.P.O. He was promoted to a post of Vehicle Mechanic with effect from 1st "August, 1965, He served for 5 years at Tezpur and was sent to 1051 Field Workshop under the Chief Engineer headquarters-Project Beacon. Ho bad filed a representation to the authorities concerned seeking his posting at a place where he could provide medical aid to his ailing wife. Hence after serving for sometime at Pathankot Detachment of the said Unit he was transferred to Tezpur in November, 1978. Then again he was promoted to the post of Engineer Equipment Mechanic on 28th August, 1982 and was ordered to be posted to 1069 held Workshop. But on his representation showing the ail-of his wife and

upon mutual arrangement with another incumbent the posting order was kept in abeyance and the Petitioner was absorbed to work at Eastern Base Workshop at Tezpur as Engineer Equipment Mechanic, in order to enable him to provide medical treatment to his wife. Later on part I order serial No. 452 dated 5th November, 1982 was issued transferring the Petitioner to 72 R.C.C. under Project Puspak. The Plaintiff protested against the posting order. It seems that a Departmental Proceeding was taken against him in respect of certain charges and he was asked to submit his explanation to the same. That Departmental Proceeding ended with an order reverting the Petitioner to the post of Driver Engine Static. The Plaintiff being aggrieved by that order dated 31st January/1983, filed a departmental appeal which is pending. Apprehending that he would be transferred and the said order would be given effect to he filed a title suit No. 10 of 1983 in the Court of Sadar Munsiff at Tezpur on 7th March, 1983 without serving a notice u/s 80 CPC on the Union of India. He also craved leave of the learned Munsiff to institute the suit without serving notice u/s 80 Code of Civil Procedure. The learned Munsiff granted leave to the Plaintiff and ordered that summons be issued to the Defendant. The Plaintiff also filed an application for grant of temporary injunction to restrain the Defendant from giving effect to the order of reduction in rank and from transferring him from Tezpur to any other station. The learned Munsiff issued notice with respect to that application as well.

3. The Union of India contested the application for the grant of the interim relief and filed objection. The learned Munsiff by his order under challenge has declined to grant temporary injunction and has therefore rejected that application. He has also directed for return of the plaint for preservation after complying with the requirement of Section 80 Sub-section (1) of the Code of Civil Procedure. Being aggrieved, the Plaintiff has come to this Court on revision.

4. I have heard the learned Counsel for both the parties.

5. For the Plaintiff Petitioner it was submitted that the learned Munsiff has exercised his jurisdiction illegally and with material irregularity inasmuch as he has given no reason as to why he was not satisfied that no urgent and immediate relief need be granted in the suit. He had also erred in rejecting the application for interim injunction on the sole ground that the Plaintiff has already filed a departmental appeal which is pending. The submission was that the very fact that said appeal has not yet been disposed of and in the meantime the impugned order was tried to be implemented and effort was being made to transfer the Petitioner furnished a cause of action to him to approach the Court for urgent and immediate relief. The learned Counsel for the Union of India on the other hand submitted that as the Plaintiff had failed to make out that any urgent and immediate relief was to be given to him the plaint was rightly returned to him.

6. In order to appreciate the relief contentions of the parties it would be appropriate to set out Section 80 Code of Civil Procedure.

7. Notice- (1) Save as otherwise provided in Sub-section (2), no suit shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity until the expiration of two months next after notice in writing has been delivered to, or left at the office of-

(a) in the case of a suit against the Central Government, (except where it relates to railway), a Secretary to-that Government;

(b) in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Govt. or any other officer authorised by that Government in this behalf:

(c) in the case of a suit against (any other State Government); a Secretary to that. Government or the Collector of the district;

and, in the case of a public officer, delivered to him. or left at, his office, stating the cause of action, the name, description and place of residence of the Plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by Sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in suit:

Provided that the Court shall, if it is satisfied, after hearing the parties that no arguable or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of Sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in Sub-section (1), if in such notice-

(a) the name description and the residence of the Plaintiff been so given as to, enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in Sub-section (1), and

(b) the cause of action and the relief claimed by the Plaintiff had been

substantially indicated.

8. It would be seen, that Sub-section (1) of Section 80 required that no suit shall be instituted against the Govt. or against a public officer in respect of any Act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to or left at the office of the Secretary to the Central Government of India. Sub-Section 2 was inserted by CPC amendment Act, 1976 which came into force with effect from 1st February, 1977. Prior to the incorporation of the Sub-section 2 no suit could be instituted against the Government without serving a two months, notice on it. The result was that even an interim relief however urgently needed could not be granted to the Plaintiff by the Civil Court, because the suit itself would not be maintainable if it had been filed without serving a notice u/s 80 Code of Civil Procedure. In order to mitigate the rigours of that provision and to enable a person to seek urgent and immediate relief against the Government or a public officer as the case may be the provision of Sub-section 2 was inserted. It was felt and rightly so that the entry to the Civil Court should not be banned to any person who seeks immediate and urgent relief against the Government or a public officer. If the Court is satisfied that immediate and urgent relief need be given to the Plaintiff it would not insist that the Plaintiff should approach the Court after the expiry of two months after serving a notice on the Govt. or the public officer. The leave of the Court shall of course be essential to institute the suit. If the leave of the Court is granted the suit would be entertained. The Plaintiff may then ask for interim relief against the Defendant and the Court would pass such order with respect to the same as it deem fit after giving a reasonable opportunity of hearing to the Defendant. The Court will then proceed to determine whether the plaint should be returned for presentation after complying with the requirement of Section 80 Sub-section (1). In doing so the Court shall consider whether any urgent and immediate relief is required to be granted to the Plaintiff. If the Court is satisfied that no urgent or immediate relief need be granted it shall return the plaint to the Plaintiff with a direction that he may present it again after complying with the provisions of Sub-section (1) of Section 80 Code of Civil Procedure. The Court has, therefore, to be satisfied whether the urgent and immediate relief need be granted in the suit. This is to be done after hearing the parties. The satisfaction of the Court as to whether any urgent and immediate relief need be granted to the suit is of course to be founded on reason. It is not to be whimsical. Rather, it is to be arrived at after taking into consideration all the facts and circumstance of the case.

9. In the case in band the Plaintiff had instituted the suit without serving notice, under Sub-section (1) of Section 80 Code of Civil Procedure. The requisite leave of the Court was granted to him. He had prayed in the suit that the order of reduction in rank passed against him be set aside and the Defendant be restrained from taking any consequential action including the action of transferring him from Tezpur to any other place. He alleged last he had been at Tezpur where relief is being provided to his ailing wife. She is said to be suffering

from mental disease. Initially he was appointed as Driver Engine Static, but in course of time he was promoted to the post of Engineer Equipment Mechanic. Now by the impugned order he has been reverted to the post of Driver Engine State. He has alleged that there is no post of Driver Engine Static, in Eastern Base Workshop at Tezpur hence if the impugned order is implemented he will have to be posted out of Tezpur. He has challenged the validity of the said order. The Union of India while contesting the application of the Plaintiff for interim relief had admitted that there is no vacancy of Driver Engine Static EBW and as such Plaintiff has to be transferred. It was pointed out by the Union of India that transfer of the Plaintiff would be necessary because of his demotion for which he himself is responsible, Further it has been averred that the process of reduction in rank is already complete and the process of transfer has already begun and at this stage it cannot be altered unless the Appellate Authority specifically directs to stay the order.

10. A perusal of the order of the learned Munsiff would disclose that the learned Munsiff did not discuss any facts and circumstances of the case to come to the conclusion whether urgent and immediate relief was required to be granted in the suit. He had merely said that he was satisfied that no urgent and immediate relief need be granted but that was not enough. He should have recorded reasons as to why he was so satisfied. His order smacks of arbitrariness. Sub-section (2) has been inserted in Section 80 CPC with a view to provide interim relief to a person who needs it urgently. Where the very purpose of the suit would be frustrated unless immediate and urgent relief is granted by the Court the requirement of notice u/s 80 Code of Civil Procedure may not be insisted. The provision of Sub-section (2) is meant to advance the cause of justice and not to stifle it. In a given case, the Court should consider the facts and circumstances thereof to ascertain whether immediate and urgent relief need be granted in the suit. It appears that in the instant case the learned Munsiff was swayed away by the fact that the Plaintiff had also filed a departmental appeal from the order of reduction in rank, Admittedly that appeal was pending and the Appellate authority had not granted any order staying the operation of the impugned order. The fact however also remains that the post of Driver Engine Static to which the Plaintiff was reverted is not available at Tezpur where the Plaintiff is at present working. No doubt, the Plaintiff has been at Tezpur for a long time. But at the same time it is not disputed that the wife of the Plaintiff is suffering from mental ailment and is undergoing treatment at Tezpur where such facility is available; hence the Plaintiff apprehending his transfer approached the Civil Court for the grant of urgent and immediate relief to the effect that he may not be transferred and the operation of the order under challenge be stayed. The Court below gave no reasons as to why urgent and immediate relief was not required to be granted in the suit.

11. In the result, the revision petition is allowed with costs. The order dated 5th April, 1983 is set aside and the Court below is directed to decide the question as to whether the plaint should be returned for presentation after complying with

the requirement of Section 30 Sub-section (1) Code of Civil Procedure. The learned Munsiff will also decide afresh the application of the Plaintiff for grant of interim relief in accordance with law. The record of the Court below shall be sent back expeditiously. The parties are directed to appear before the Court below on 25th Jane, 1984. In the meantime, the status quo shall be maintained.